IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8781 of 2004

Carona Limited ...Petitioners

vs.

M/s.Parvathy Swaminathan & Sons ...Respondents

Mr.C.U.Singh, for Petitioners.

Mrs.Prabha Rathod i/b. Mr.Suresh M.shah, for Respondents.

CORAM: R.M.S.Khandeparkar,J.

DATED: 1st November,2004

P.C.:-

1. Heard learned Advocates for the parties. The Petitioners challenge the order passed by the Trial Court dated 16th December,2002, in Suit no.226/240/2001 and that of the Appellate Bench of Small Causes Court passed on 3rd August,2004 in Appeal no.277 of 2003. The appellate bench has dismissed the appeal against the order of the Trial Judge, whereby the direction to the Petitioners to deliver vacant possession of the suit premises stands confirmed.

2. The Petitioners challenge the impugned orders on two grounds, firstly that the challenge to the provisions of law comprised under section 3(1)(b) of Maharashtra Rent Control Act,1999 is pending before the Apex Court and since the entire proceedings were initiated taking shelter of the said provisions of law which is under challenge before the Apex Court, giving effect to the eviction order, would render the said challenge on behalf of the petitioners, to be infructuous. Besides that the petitioners will not be able to avail of benefit of any order favourable to the petitioners if passed by the Apex Court in those proceedings. Secondly, it is sought to be contended that the scheme for reduction in the paid up share capital of the petitioners-company is pending for consideration before the competent authority and the said scheme has been approved by all the shareholders and it is waiting approval by the competent authority and once it is granted, it would relate back to the date on which it was applied for and the same being prior to the date of the cause of action for eviction in the matter, it would result in the absence of jurisdictional fact which was necessary for the Trial Court to take

cognizance for application of eviction on the basis of Section 3(1)(b) of the said Act, and therefore,

the whole proceedings would be rendered ab-initio, bad-in-law. In such circumstances, if the impugned decree is allowed to be executed at this stage, it will result in great prejudice to the petitioners. Besides, it will also affect the proper implementation of the scheme for reconstruction of the Company which is expected to be approved in terms of provisions of Sick Industrial Companies (Special Provisions) Act,1985.

3. The learned Advocate for the Respondents, however, has brought to the notice of the Court that the notice terminating the tenancy in favour of the petitioners was issued on 23rd February,2001, thereby informing the termination of the tenancy with effect from 31.3.2001 and on that date the paid up share capital of the petitioners was admittedly more than Rupees One crore. Since, on the date of accrual of the cause of action for initiating the proceedings, the paid up share capital of the petitioners/company was more than Rupees One Crore, the Trial Court had jurisdiction to entertain the proceedings in view of the

provisions of law comprised under Section 3(1)(b) of the said Act, and therefore, merely because the scheme for reduction of the paid up share capital

is pending and it may be approved, even retrospectively, that would not be to the advantage of the petitioners to contend that there was no jurisdictional fact so as to enable the Trial Court to take cognizance of the case filed by the Respondents against the Petitioners.

4. Once it is not in dispute between the parties that the tenancy of the petitioners was terminated with effect from 31.3.2001 and on that day the paid up share capital of the petitioners/ company was more than Rupees One Crore, no fault can be found with Trial Court taking cognizance of the eviction proceedings initiated against the petitioners, as the Trial Court definitely had jurisdiction to entertain such proceedings, considering the provisions of law comprised under Section 3(1)(b) of the said Act, as rightly submitted by the learned Advocate for the Respondents. **The clause (b) of Section 3(1) of the said Act clearly provides that "the said Act shall not apply to any premises let or sub-let to Banks,**

or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private

limited companies and public limited companies having a paid up share capital of rupees one crore or more." Undisputedly, the petitioners/company is a Public Limited Company having share Capital of more than Rupees One crore.

5. It appears that the petitioners/company had moved for reduction of paid up share capital even prior to issuance of notice dated 23.2.2001. Nevertheless there had been no approval granted to such request till the date of accrual of cause of action for eviction of the petitioners and even on the date of filing of proceedings in that regard by the Respondents against the Petitioners. The jurisdictional fact which is necessary for the Court to take cognizance is the one which factually exists when the cause of action arises and continued to exist till the date of cognizance being taken by the Court in that regard. Merely because certain orders are to be passed subsequently favouring petitioners, it cannot affect the jurisdiction of the Court to take

cognizance of the matter brought before the Court, unless there are specific statutory provisions to that effect. Undisputedly neither under Sick Industrial Companies (Special Provisions) Act,1985 nor under Maharashtra Rent Control Act or any other

statute, there is any provision which can nullify or affect the jurisdiction of the Court, once it takes the cognizance of the matter relating to the eviction of the tenants at the instance of his landlord by taking benefits of statutory provisions comprised under Section 3(1)(b) of the said Act. Being so, the contention that the retrospective approval to the reduction in the Share capital of Petitioners/company would result in non-existence of jurisdictional fact to enable the Court to take cognizance of the matter filed by the Respondents, is totally devoid of any substance.

6. The attention was sought to be drawn to Section 18(8) as well as Section 26 and 32 of Sick Industrial Companies (Special Provisions) Act, 1985, contending that the Courts cannot take cognizance in relation to the matters covered by the said Act, and therefore, reduction in the paid up share capital even though approved retrospectively, it would affect the jurisdiction

of the Court to entertain the eviction proceedings against the petitioners. The section 18(8) of the said Act provides that

> "(8) On and from the date of the coming into operation of the sanctioned scheme or any provision

> thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies."

Obviously this provision has nothing to do with the dispute in relation to the landlord-tenant relationship between the company and its landlord in relation to the premises which might have been occupied by the company on lease.

7. Section 26 deals with the subject of bar of jurisdiction and it provides that "**No order passed or proposal made under the Sick Industrial**

Companies (Special Provisions) Act,1985 shall be appealable except as provided therein and no civil Court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or

to be taken in pursuance of any power conferred by or under this Act." Evidently, the issue in relation to the cause of action for eviction of the lessee or any decision as regards the relationship of landlord-tenant or termination thereof, is not covered by any of the provisions of Sick Industrial Companies (Special Provisions) Act,1985 and secondly, no authority under the said Act is empowered to deal with any such issue. Being so any order in relation to such issue cannot be said to be an order passed under the said Act, and hence, the provisions of Section 26 of the said Act are not at all attracted in the case in hand.

8. Section 32 of the Sick Industrial Companies (Special Provisions) Act, 1985 relates to the subject of "**Effect of the Sick Industrial Companies (Special Provisions) Act on the other laws".** Sub-section (1) provides that "**the**

provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act,1973 and the Urban Land (Ceiling and Regulation) Act,1976 for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any

other instrument having effect by virtue of any law other than this Act." Sub section (2) provides that "**Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions of section 72A of the Income-tax Act,1961, shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendations by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company.**" In short, the said provision clarifies that the provisions of the said Act as well as the scheme drawn under the said Act will be effective and enforceable notwithstanding anything

inconsistent therewith contain in the other law except in the statute specified thereunder. Undoubtedly, if the scheme is approved retrospectively, in relation to the reduction in the paid up share capital, then the changes which are brought about retrospectively will be good for all other purposes under the provisions of

Sick Industrial Companies (Special provisions) Act,1985, however, it will not be to the benefit of the petitioners to contend that factually on 31.3.2004 the paid up share capital of the petitioners/company would be less than Rupees One crore and therefore, the Court would have no jurisdiction to entertain the suit, when in fact, actually that the record of the petitioners/ company discloses that the paid up share capital was more than Rupees One Crore on the relevant day.

9. As regards the matter which is pending before the Apex Court, undoubtedly, there is challenge by some of tenants to the provisions of law comprised under Section 3(1)(b) of the Maharashtra Rent Control Act. Such a challenge was

rejected by the Division Bench or by this Court, and the matter is pending before the Apex Court and even the Apex Court has not granted any stay of the proceedings under the provisions of law comprised under Section 3(1)(b) of the Said Act nor has granted stay to the proceedings against the tenants initiated by the landlord by taking shelter of the provisions under Section 3(1)(b) of the Said Act. In the circumstances, merely because the proceedings are pending at the appellate stage

before the Apex Court that cannot be the justification to deny the eviction decree to the respondents.

10. For reasons stated above, there is no reason for interference in the impugned orders in exercise of writ jurisdiction under Article 227 of Constitution of India. Hence, the petition is rejected with no order as to costs.

11. On the oral request of the learned Advocate for the petitioners though objected by the learned Advocate for the Respondents, time to vacate the suit premises is extended till 28th February,2005, subject to petitioners, through duly

authorised signatory, filing undertaking before the Registrar (General) of this Court within the period of Four weeks from today and the said undertaking to the effect that it would deliver vacant and peaceful possession of the suit premises to the respondents on or before 28th February,2005. Meanwhile, the petitioners would not induct any third party in the suit premises nor would create any third party interest by whatsoever manner.

1.11.2004 (R.M.S.Khandeparkar, J.)